

Substitute Findings, Conclusions and Decision (FC&D) for Clerk File 314425.

This substitute FC&D: (1) corrects typographical errors; (2) clarifies findings and conclusions; and (3) conforms the conditions of approval to those incorporated into the amended Property Use and Development Agreement (PUDA) accepted by Council Bill 119511. Proposed changes are shown in [track changes](#).

Sponsor: O'Brien

**FINDINGS, CONCLUSIONS, AND DECISION  
OF THE CITY COUNCIL OF THE CITY OF SEATTLE**

In the matter of the remand	)	C.F. 314425
from King County Superior	)	SDCI Project 3023260
Court of	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION ON REMAND
	)	
The Approval Granted	)	
through C.F. 314356 for a	)	
Contract Rezone: Application	)	
of 70th & Greenwood Ave,	)	
LLC to rezone an	)	
approximately 12,188 square	)	
foot site located at 7009	)	
Greenwood Avenue North	)	
from Neighborhood	)	
Commercial 2 with a 40-foot	)	
height limit (NC2-40) to	)	
Neighborhood Commercial 2	)	
with a 55-foot height limit and	)	
M Mandatory Housing	)	
Affordability suffix (NC2-55	)	
(M)) (Project No. 3023260;	)	
Type IV).	)	

**Introduction**

This matter involves a remand from King County Superior Court of a decision by the Council to approve the application by 70<sup>th</sup> & Greenwood, L.L.C. (the Applicant) to rezone a site located at 7009 Greenwood Avenue North (the Property).

The eastern part of the Property is zoned Neighborhood Commercial 2 with a 40-foot height limit (NC2 40) and the western part of the Property is zoned Single Family 5000

(SF 5000). The Applicant proposes to rezone the NC2 40 portion of the Property to Neighborhood Commercial 2 with a 55-foot height limit and M Mandatory Housing Affordability (MHA) suffix (NC2 55 (M)), as shown on ~~Exhibit A~~ Attachment B.

The Applicant proposes to develop the Property with a 35-unit apartment building with approximately 6,000 square feet of retail space surrounding an interior courtyard. The building would have below-grade parking for 26 vehicles. The proposed building would be approximately five stories tall. An existing single-family house and detached structure, which are located on the SF-5000 zoned portion of the Property are proposed to remain.

On April 9, 2018, the Director of the Seattle Department of Construction and Inspections (SDCI) recommended approval of the proposed rezone subject to conditions. SDCI also issued a State Environmental Policy Act (SEPA) decision and design review decision.

On April 30, 2018, the Hearing Examiner held an open record hearing on the rezone recommendation. On June 5, 2018, the Hearing Examiner recommended that the Council conditionally approve the rezone petition. On June 19, 2018, Irene Wall and Bob Morgan (Appellants) appealed the Hearing Examiner's recommendation to the Council.

On August 6, 2018, the Council affirmed the Hearing Examiner's decision, conditionally granted the rezone application,<sup>1</sup> and passed Ordinance 125640, which amended the Official Land Use Map and accepted a Property Use and Development Agreement (PUDA).

On August 27, 2018, the Appellants filed a land use petition in King County Superior Court alleging six errors in the Council's decision and requesting, among other things, that the Court reverse the Council's decision. On March 5, 2019, the Court issued

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<sup>1</sup> See the Findings, Conclusions, and Decision in C.F. 314356.

an order (1) remanding the rezone approval to Council to address compliance with one rezone criterion, (2) denying other claims by the Appellants, and (3) retaining jurisdiction. On March 27, 2019, the Court issued an amended order after reconsideration. The amended order directs:

Pursuant to RCW 36.70C.140, the contract rezone approval and Property Use and Development Agreement are hereby remanded to the City Council to address compliance with SMC 23.34.009.D.2, which requires that '[a] gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers, as described in subsection [23.34.008.E.2], are present,' in the area where the commercial Lot 287710- 4100 shares a rear boundary line with the single family residential Lot 287710- 4120 at 7010 Palatine Avenue North. (Order of Remand after Reconsideration, March 27, 2019)

On April 17, 2019, the Planning, Land Use and Zoning Committee heard oral argument from the Applicant and Appellants and recommended that the Council affirm the rezone subject to conditions in an amended PUDA.

### **Findings of Fact**

The Council adopts the Hearing Examiner's Findings of Fact as stated in the Findings and Recommendation of the Hearing Examiner dated June 5, 2018, and the following additional findings of facts:

1. On March 18, 2019, the Council passed Ordinance 125791, which increased the height of the commercial zone within the Greenwood / Phinney Ridge Urban Village adjacent to the Property from 40 feet to 55 feet, and established new upper level setback development standards, and implemented the Mandatory Housing Affordability program. The zone designation for the commercial zone abutting and adjacent to the Property now has an NC2 55 (M) zone designation.

2. The rear yard of the single family residential Lot 287710- 4120 at 7010 Palatine Avenue North can be modified to provide a landscaped open space that could be integrated into the landscaped open space on single family residential lot 287710-4127.

### **Conclusions**

The Council adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated June 5, 2018 and the following additional conclusions.

1. A landscaped open space in the rear yard of the single family residential Lot 287710- 4120 at 7010 Palatine Avenue North provides a physical open space buffer between land uses and allows for a gradual transition between the height and scale of the neighborhood commercial zone on the east side of the Property and the single family zone on the west side of the Property.

### **Decision**

The Hearing Examiner's recommendation to conditionally approve the rezone is ***affirmed and the rezone is granted*** contingent on execution by the owner of the Property of ~~an amended Property Use and Development Agreement (PUDA)~~ containing those rezone conditions set out below.

In addition to the SEPA and design review conditions from the Hearing Examiner's recommendation, which are incorporated herein by reference, the rezone is subject to the following conditions:

### **Rezone Conditions**

- ~~1. Future development of the Property, including the single family zoned portion, is restricted to a project that complies with Master Use Permit (MUP) No. 3023260, once the Seattle Department of Construction and Inspections (SDCI) issues that MUP. This includes maintaining as landscaped open space areas of the residential lots identified as Assessor's Parcel Number 287710-4120 and 287710-4127. Before issuing the MUP, SDCI must confirm that the drawings substantially comply with the conditions established during the design review process and Council review, including the structure design and location on the site, structure height, building materials, landscaping, street improvements, parking design, signage and site lighting.~~
- ~~2. The provisions of Seattle Municipal Code Chapters 23.58B and 23.58C shall apply to the rezoned portion of Property. For purposes of applying those Chapters, future development of the rezoned portion of the Property shall be subject to the following performance or payment requirements:
  - ~~▪ For Chapter 23.58B, 5% per square foot for the performance option or \$7.00 per square foot for the payment option; and~~
  - ~~▪ For Chapter 23.58C, 6% of units for the performance option or \$13.25 per square foot for the payment option.~~~~
1. Before a building permit is issued, the Owner shall submit to, and obtain approval from, the Seattle Department of Construction and Inspections (SDCI) of revised landscape plans substantially similar to the plan shown on Attachment C.
2. Future development of the Property, including the single-family-zoned portion, is restricted to a project that complies with Master Use Permit (MUP) No. 3023260, once SDCI approves a revised MUP that conforms to the requirements of condition 1(a) of this Agreement. This includes maintaining as landscaped open space the area identified on Attachment A as Assessor's Parcel Number 287710-4127 and the eastern portion of 287710-4120 shown on Attachment C.
3. The provisions of Seattle Municipal Code Chapters 23.58B and 23.58C shall apply to the rezoned portion of Property. For purposes of applying those Chapters, future development of the rezoned portion of the Property shall be subject to the following performance or payment requirements:
  - For Chapter 23.58B, 5% per square foot for the performance option or \$7.00 per square foot for the payment option; and
  - For Chapter 23.58C, 6% of units for the performance option or \$13.25 per square foot for the payment option.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
City Council President

CF 314225 - Substitute F, C & D

ATTACHMENT A

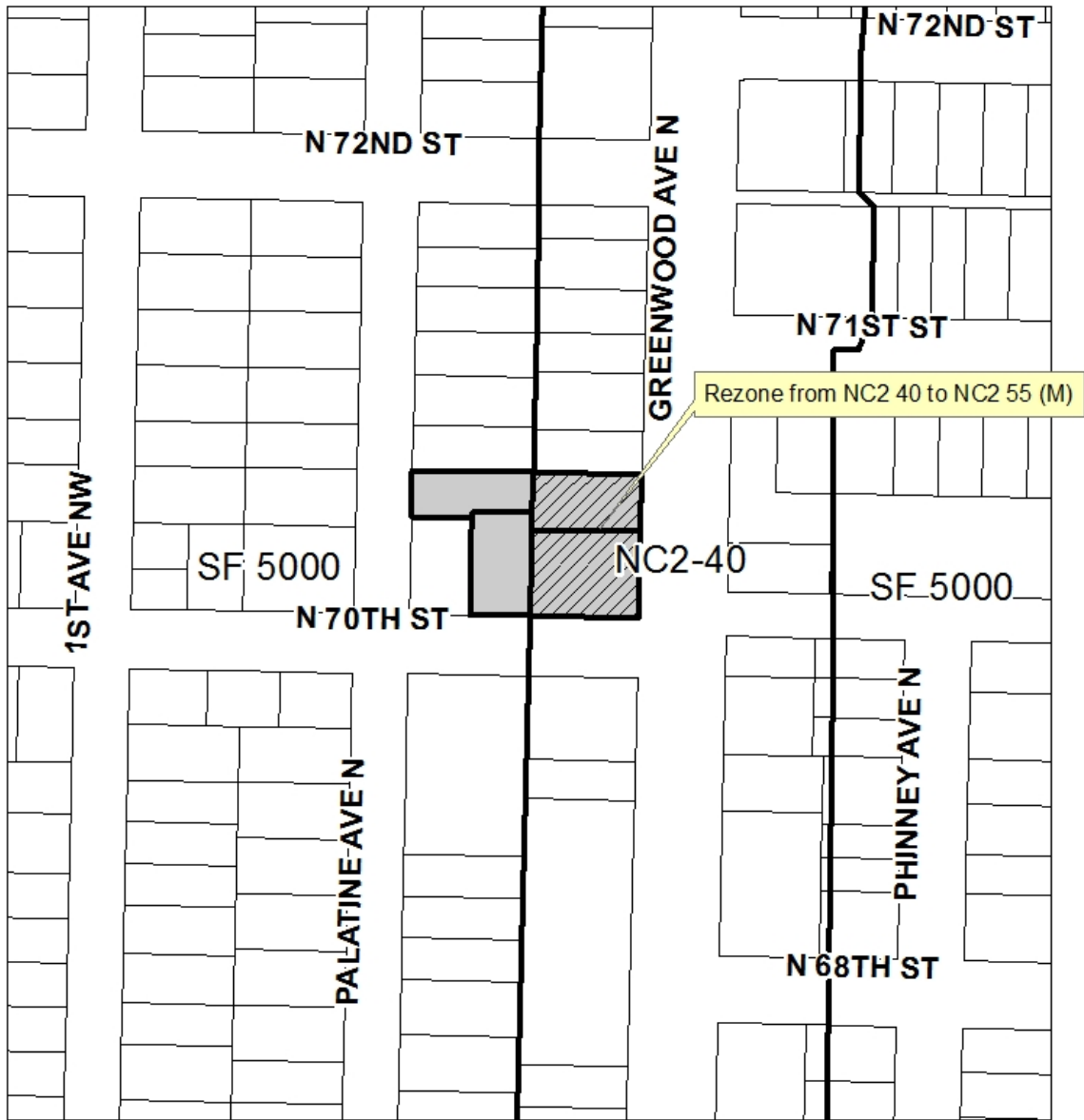
<u>Assessor's Parcel Number</u>	<u>Legal Description</u>
<u>287710-4100 And 287710-4085</u>	<p><u>LOTS 1, 2, 3, 4, AND 5, IN BLOCK 23 OF GREENLAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS ON PAGE 170, RECORDS OF KING COUNTY, WASHINGTON.</u></p> <p><u>EXCEPT FOR THE EAST 10 FEET THEREOF CONDEMNED FOR GREENWOOD AVENUE IN THE SUPERIOR COURT OF KING COUNTY CAUSE NO. 65489, UNDER PROVISIONS OF ORDINANCE NO. 19334.</u></p>
<u>287710-4127</u>	<p><u>THE SOUTH 15 FEET OF THE EAST 53 FEET OF LOT 9 AND THE EAST 53 FEET OF LOTS 10, 11, AND 12, IN BLOCK 23 OF GREENLAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, AS PER RECORDED VOLUME 2 OF PLATS ON PAGE 170, RECORDS OF KING COUNTY, WASHINGTON.</u></p> <p><u>SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.</u></p>
<u>287710-4120</u>	<p><u>LOTS 8 AND 9, BLOCK 23, GREEN LAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 170, RECORDS OF KING COUNTY, WASHINGTON;</u></p> <p><u>EXCEPT THE SOUTH 13.5 FEET OF THE EAST 53 FEET OF LOT 9;</u></p> <p><u>AND EXCEPT THE SOUTH 10 FEET OF THE WEST 54.5 FEET OF</u></p>

<u>Assessor's Parcel Number</u>	<u>Legal Description</u>
	<u>LOT 9.</u>



ATTACHMENT B

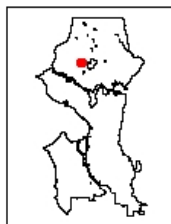
CF 314225 - Substitute F, C & D



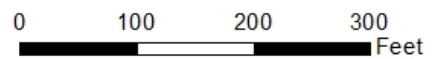


**Rezoning**  
Clerk File 314356  
SDCI Project No. 3023260  
7009 Greenwood Ave N.

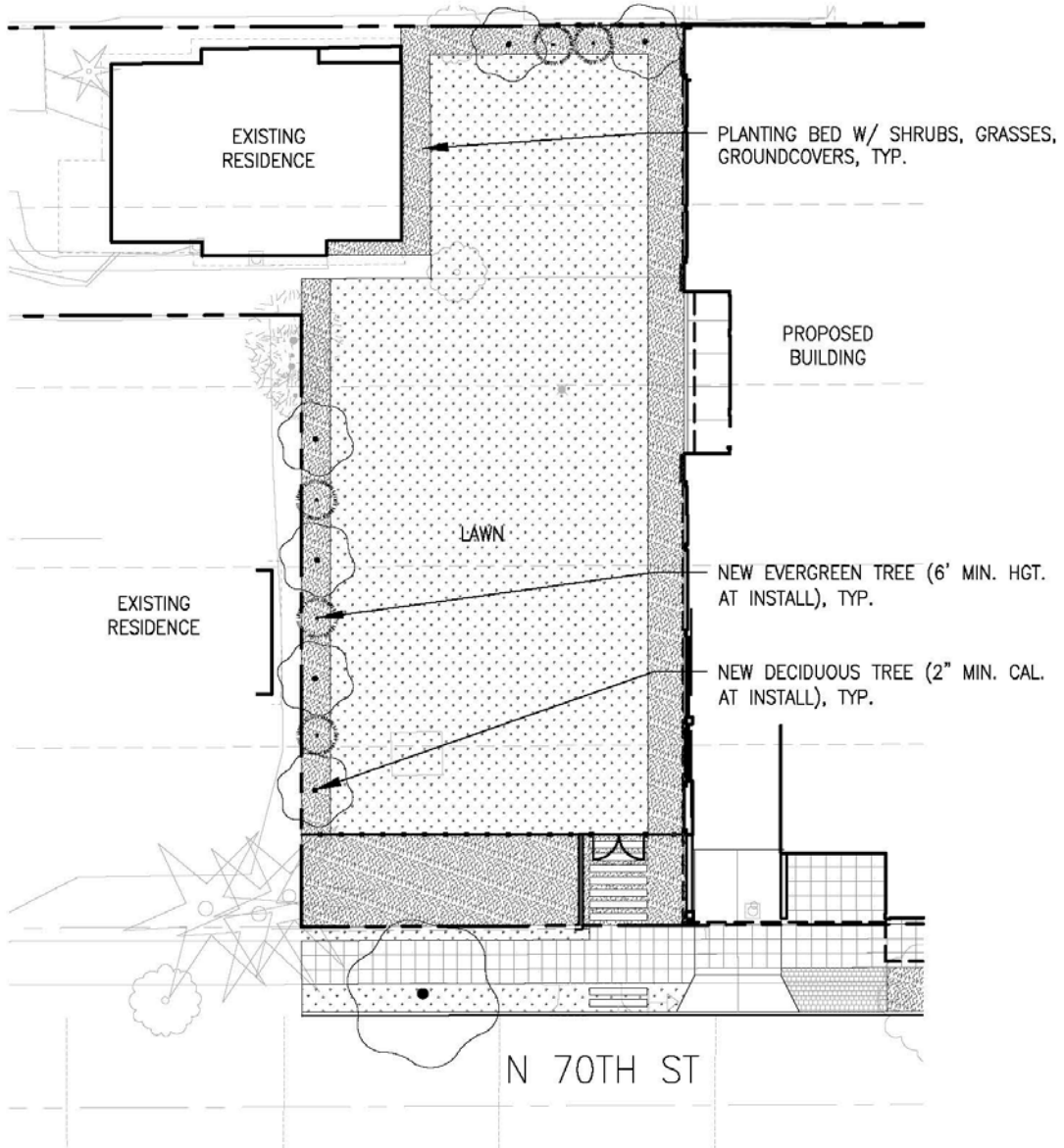
-  Rezoning Area
-  Area Subject To PUDA



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City of Seattle. Prepared July 6, 2018  
by Council Central Staff.



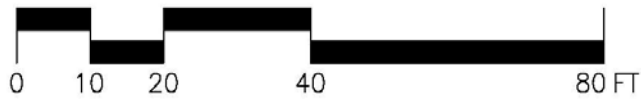
# ATTACHMENT C



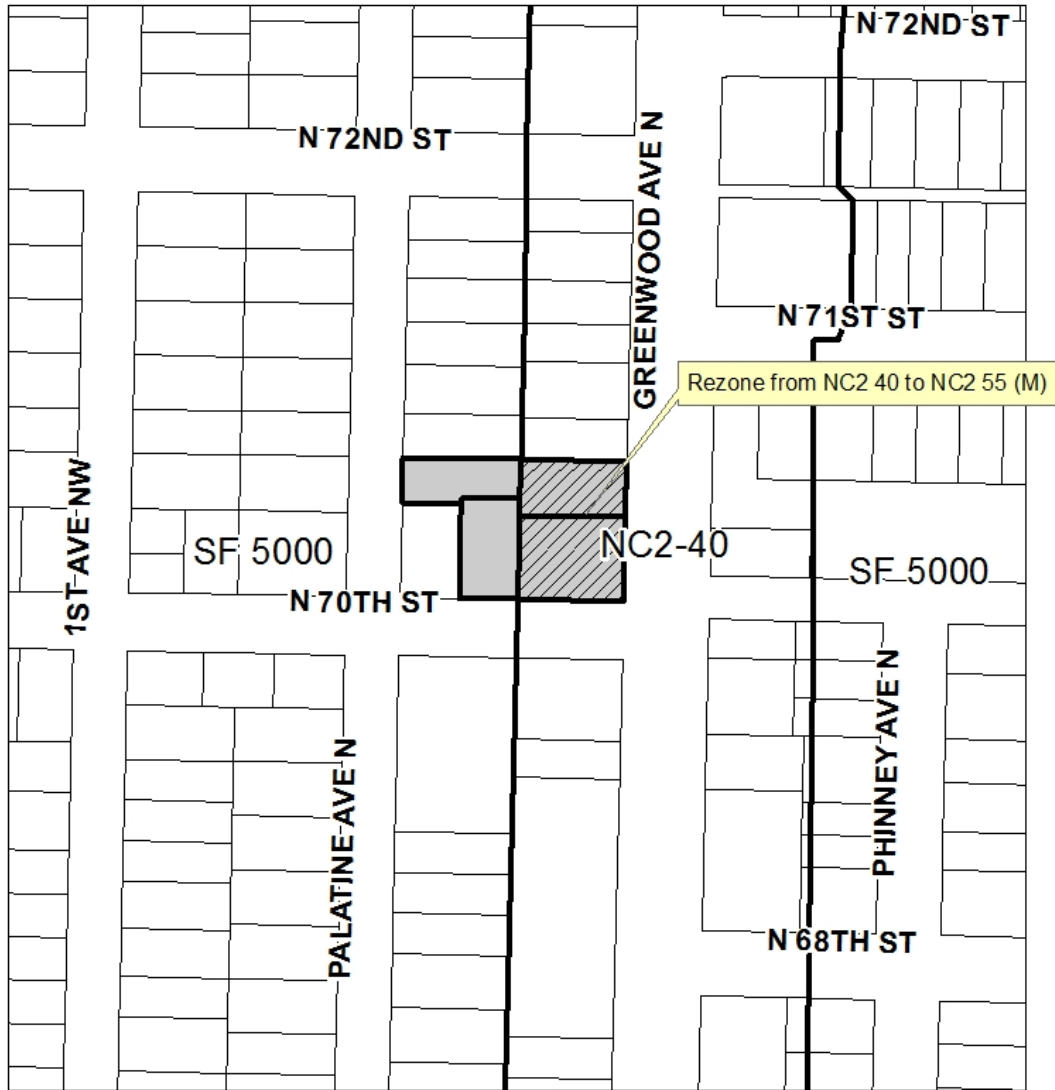
## LANDSCAPE PLAN

SHARED ROOF  
7009 GREENWOOD AVE N



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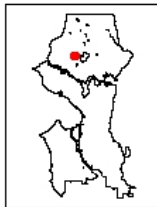


**Exhibit A**



Rezone  
Clerk File 314356  
SDCI Project No. 3023260  
7009 Greenwood Ave N.

-  Rezone Area
-  Area Subject To PUDA



0 100 200 300 Feet

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